

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Modernization of Media Regulation Initiative

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MB Docket 17-105

To The Commission

**REPLY COMMENTS OF THE MULTICULTURAL
MEDIA, TELECOM AND INTERNET COUNCIL ON
THE MODERNIZATION OF MEDIA REGULATION INITIATIVE**

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I. Updating Certain EEO Rules Will Not Interfere With The Commission's Goals Of Preventing And Proscribing Discrimination

A. EEO Midterm Reports (Form 397)

Several parties sought the elimination of Form 397, asserting that the information contained on the form is available in the parties' online public files or is otherwise available on stations' websites.¹ The National Association of Broadcasters ("NAB") stated that the elimination of the Form 397 will have no effect on broadcasters' ability to be in compliance with substantive EEO requirements.²

Form 397 is seldom, if ever, used for EEO enforcement or citizen review of EEO performance. Thus, MMTC does not object to its elimination. It is far more important that the Commission encourage broadcasters to focus their limited resources on broad recruitment and outreach, including outreach to diverse job recruitment sources in their communities. *See* §II *infra* (discussing entitlement sources).

B. The EEO Public Inspection File Website Posting Requirement

The EEO Public Inspection File website posting requirement³ is duplicative and may be eliminated. Eliminating this requirement will allow regulatees to avoid posting the same information twice. As the American Cable Association pointed out, "requiring substantially similar information to be available through two distinct links on an operator's homepage is unnecessary."⁴

¹ Alpha Media *et al.* Comments at 3 (filed July 5, 2017); CBS *et al.* Comments at 4 (filed July 5, 2017).

² NAB Comments at 3 (July 5, 2017); *see also* Meredith Comments at 1 (filed July 5, 2017).

³ 47 C.F.R. §76.1702(b).

⁴ American Cable Association Comments at 13 (filed July 5, 2017).

II. Broadcasters Should Continue To Use Entitlement Sources

One rule that should not be eliminated is the requirement that broadcasters send job vacancy notifications to “entitlement sources.” E-mailing job notices to a handful of sources that want such notices requires almost no effort. Organizations that request these vacancy notifications typically include colleges (particularly community colleges and HBCUs), Urban League chapters, LULAC councils, and job training centers. These job notices help the community institutions encourage clients, students, and others to consider the broadcast company favorably when planning a career.

Some commenters contend that these entitlement sources are no longer needed because they produce few job referrals in the short term. These commenters misunderstand the purpose of entitlement sources. An entitlement source is an integral part of a broadcaster’s *promotion* of its equal employment opportunity policy – the broadcaster’s open door to all who might wish to work there someday. This is the same kind of multi-source outreach every broadcaster does when promoting its brand as part of its advertising campaign.

Some commenters contend that the posting of vacancies online compensates for entitlement sources,⁵ but that is not correct. A posting on a sterile “broadcast jobs” website featuring thousands of jobs nationwide is no substitute for a job notice on the local jobs bulletin board that the placement office of an HBCU has received via personal e-mail from the general manager of the broadcast station. In a “people” business like broadcasting, most hiring is done face-to-face and is based on relationships. Entitlement

⁵ See Nextstar Comments at 14 (filed July 5, 2017); Alpha Media Comments at 12 (filed July 5, 2017).

sources should be embraced as a window into these relationships – an opportunity to facilitate diverse hiring in the digital age.

III. The Issues/Programs List Allows Broadcasters To Preserve Some Connection To Their Communities

The quarterly issues/programs reports rule requires broadcasters to provide a list of programs that have provided the most significant treatment of community issues during the preceding three-month period. This list must be placed in the public file. Some commenters have recommended that the FCC change the requirement from quarterly to annually.⁶

At the present time, MMTC takes no position on whether the reports should be provided annually rather than quarterly. It may be that some community groups review these reports every quarter to evaluate their local stations' responsiveness. If the record ultimately reflects that, we would not want to be a party to the repeal of what might be a useful tool for protecting the public interest.

The reporting requirement, whether annually or quarterly, should be retained because it serves an important purpose. When it was adopted as part of the 1981 radio deregulation proceeding, it was designed as a non-burdensome substitute for what had been an elaborate and expensive program of ascertainment surveys of community needs. Although these ascertainment surveys were often not cost-effective, they were well-intended: they were aimed at ensuring that broadcasters were not walled off from

⁶ See Alpha Media Comments at 5-6 (filed July 5, 2017); NAB Comments at 2 (filed July 5, 2017).

portions of their communities that were generally not well served by the broadcast industry.⁷

Today, with minority media ownership still at very low levels,⁸ and the Commission not even measuring equal employment in broadcasting, it can hardly be said that the need for some broadcast industry conscious and structured attention to community needs has disappeared. Further, with the elimination of the Main Studio Rule – a reform that MMTC has strongly supported⁹ - there will be an even greater need for a conscious connection between the broadcast station and the diverse populations it is licensed to serve. The issues/programs list provides this connection, and does so in a First Amendment-friendly and non-intrusive way.

Compiling these reports requires some work, but so do all reports worth compiling. Issues/programs lists do not require very much work, because broadcasters already know what programs they have broadcast and what issues they have covered.

Most broadcasters take pride in what they offer the public, and those who don't take pride ought to think of these reports of as a time capsule of what they accomplished as a public trustee. We have seen this happen. As the owner of the nation's only minority owned (and only non-profit) media brokerage, MMTC Media and Telecom

⁷ See *Deregulation of Radio*, Report and Order, 84 FCC2d 968, 998-99 (1981) (subsequent history omitted) (noting that “it is the programming and not the process that is the most important component of the broadcaster’s efforts, the public’s attention, and the Commission’s concern” and that the issues/program list is “[t]he only paperwork requirement that will attach to this obligation[.]”)

⁸ See Industry Analysis Division, Media Bureau, Third Report on Ownership of Commercial Broadcast Stations, Form 323 Data as of October 1, 2015, p. 4 (racial minorities and Hispanics in 2015 owned 7.0% of commercial full power TV stations, 10.8% of commercial full power AM stations, and 6.5% of commercial full power FM stations).

⁹ See MMTC Comments Elimination of Main Studio Rule, MB Docket No. 17-106 (filed June 30, 2017).

Brokers, MMTC has had the experience of managing broadcast station closings where the seller was leaving the industry and wanted to be sure that the issues/programs lists had been properly archived for posterity as a record of the good things she had accomplished as a public trustee.

The issues/programs list is one of the best ideas in broadcast regulation. It should be retained.

IV. Local Newspaper Publication And Mailing Requirements Can Be Repealed

Posting notices in newspapers is expensive, time consuming and inefficient¹⁰ relative to how listeners consume information in 2017. As stated in Nexstar's Comments, "[w]hile newspaper publication may have been the most efficient way to reach a large population when the Commission adopted this rule, today, a licensee can reach more people more effectively through some combination of over-the-air broadcast, online, and social media."¹¹ Instead of requiring stations to submit notices to a newspaper, the Commission should allow stations to use primarily on-air notices or, depending on the length of the notice, to direct listeners to the stations' websites.

Similarly, requirements for the use of "snail mail" rather than e-mail should be repealed as obviously outdated and, as commenters have shown, incredibly expensive.¹²

V. The Rural Radio Policy Should Be Repealed

In its Comments, MMTC contended that the rural radio policy has prevented minority and small broadcasters from improving their stations and serving their intended

¹⁰ See MMTC Comments at 4 (filed July 5, 2017).

¹¹ See Nexstar Comments at 15-16 (filed July 5, 2017); *see also* NAB Comments at 21 (filed July 5, 2017).

¹² See CBS Comments at 10-12 (filed July 5, 2017) (a single broadcast station group must send more than 1,000 retransmission consent letters, all by certified mail).

audiences. If the Commission wishes to eliminate unnecessary, outdated and unduly burdensome regulations, this policy should be a priority for elimination. Many minority owners and small broadcasters entered the business when the only stations available or affordable were in outlying areas, but their intended audiences were located in central urban locations. Although the spectrum would allow movement of transmitters to reach these areas, FCC policies stood in the way. Rather than allowing the station owner to determine what type of programming would serve its audience, the FCC arbitrarily placed barriers in his way.

Comments making the same point as MMTC were also filed by Brantley Broadcast Associates, LLC, Red Mountain Ventures, LLC, Great South Wireless, LLC, and Shelby Broadcast Associates, LLC (“Brantley”); by Educational Media Foundation (“EMF”); and by Reynolds Technical Associates (“RTA”).¹³ EMF stated that the ability of stations to respond to market conditions and serve their communities are greatly hampered by these policies. As a result, stations are frozen in their current locations and unable to take advantage of potential site relocations that would allow them to serve greater populations.¹⁴ EMF added that the FCC erroneously determined that rural service is more important than urban service, rather than comparing the relative needs of both areas. EMF concluded that “[s]uch a result is antithetical to [the Commission’s] goal of increasing diversity in the broadcast marketplace.”¹⁵

¹³ Brantley Broadcast Associates *et al.* Comments at 5-7 (filed July 5, 2017); Educational Media Foundation Comments at 1-7 (filed July 5, 2017); Reynolds Technical Associates Comments at 1-4 (filed July 5, 2017).

¹⁴ EMF Comments at 2 (filed July 5, 2017).

¹⁵ *Id.* at 3.

In these situations, rural areas are not being abandoned. After an area is vacated, adequate service remains. When a move takes place, one or more other stations typically fill in the spectrum space being vacated so that service is not lost. As explained by EMF, “if there is a need for service, there is a much greater likelihood that any station moved from a rural community can be replaced by a new station on a vacant frequency if there is a marketplace demand for such service.”¹⁶

EMF further asserted that as a noncommercial broadcaster, it is similarly situated to many minority groups, small broadcasters and other new entrants. It does not have the resources to acquire high-powered stations’ licenses in the larger markets, but it should not arbitrarily be prevented from competing in these markets. Rather the marketplace is the best arbitrator for these decisions. RTA and Brantley filed comments expressing similar views.¹⁷ This observation has merit.

The station owner is best equipped to decide to take the business risk based on its determination of local support and its ability to deliver programming to meet the needs of its audiences. The Commission should not assume that radio stations will not provide issue-responsive local programming when there are economic incentives to serve a larger audience. Broadcasters recognize that localism is the lifeblood of the station’s survival. It is what sets them apart from all other forms of delivery services. Broadcasters cannot ignore their communities without risking their station’s viability. The Commission can fulfill the dictates of Section 307(b) by removing artificial barriers to improvements in service.

¹⁶ *Id.* at 6.

¹⁷ *See* RTA Comments at 4 (filed July 5, 2017); Brantley Comments at 7 (filed July 5, 2017).

VI. A Broadcaster Should Be Able To Transmit From Anywhere Within Its Service Area

EMF contended that since the FCC has already interpreted the licensing of stations to communities in Section 307(b) on a broader basis in urbanized areas, the same interpretation can be applied to areas outside of the urbanized areas.¹⁸ We agree. When a station desires to move from one city to another in an urbanized area, the FCC does not compare the communities; it views the service area as the more important consideration and allows the move as long as a city grade signal is provided over the specified community.

EMF suggested that the same approach should apply to moves by all other stations so they can choose to serve any community within their service areas.¹⁹ MMTC supports this concept in order to give stations more flexibility in order to better serve their audiences. MMTC pointed out in its Comments that today there are many obstacles, such as zoning and environmental considerations, for siting of towers.²⁰ This is especially true for the multi-tower arrays for AM stations. Thus, eliminating the restrictive provisions of Section 73.24(g), for example, and interpreting Section 307(b) in a broader manner would be of great benefit to those minority and small broadcasters who have AM stations, as well as those who are in need of relief from the restrictions placed on site locations.

VII. The Commission Should Open A Proceeding On Translator Origination

In MMTC's Comments, we suggested that the Commission consider modernizing

¹⁸ See EMF Comments at 7-9 (filed July 5, 2017).

¹⁹ *Id.* at 9.

²⁰ See MMTC Comments at 7 (filed July 5, 2017).

the translator origination rules.²¹ MMTC's suggestions included:

1. Allowing AM station owners who have FM translators to broadcast original content from their translators under certain circumstances, such as when the AM station is a "failing station." This would open up another stream for AM stations to broadcast content.
2. Allow AM station owners to turn in their AM licenses and begin operating their FM translators as a "protected low power" FM station.
3. Open a five-year window during which AM stations owners can broadcast original content from both the AM station and FM translator. Then, after the five-year window, the owners could choose to either return to broadcasting primarily from the AM station and stop originating content from the translator or, they can turn in their AM license and continue broadcasting from the FM translator.²²

Other commenters with similar suggestions also wish to see the Commission take an innovative approach to addressing translator origination rules. For example, Don Davis, the owner of Vanguard Media LLC, licensee of AM radio station KOAZ (Isleta, NM) and the licensee of FM translator station K279BP,²³ suggested that after a defined period, the Commission should allow the AM station licensee "to discontinue operation of the AM station and surrender the license for the AM station to the Commission, while maintaining the operation of the translator."²⁴ According to Mr. Davis, providing AM station licensees this option would accomplish three goals:

1. Diminish the number of interfering signals across the AM band;
2. Reduce the amount of resources consumed that have environmental repercussions; and
3. Redistribute financial resources to better serve the AM stations' communities.²⁵

²¹ *Id.* at 11-12.

²² *Id.* at 12.

²³ *See* Don Davis Comments at 1 (filed July 5, 2017).

²⁴ *Id.* at 6.

²⁵ *Id.* at 7.

Another suggestion, put forth by 40-year broadcast owner M. Kent Frandsen, is to have “translator feeds by any means available – including Internet and satellite transmissions.”²⁶ According to Mr. Frandsen, over-the-air reception to distant translators subjects the signal to interference by causes such as weather conditions.²⁷

These comments underscore the desirability of a proceeding on translator origination. FM translators have been effective in helping AM stations reach broader audiences. With innovative approaches, FM translators can become a vehicle for AM stations to remain competitive.

Respectfully submitted,²⁸

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²⁶ See M. Kent Frandsen Comments at 3 (filed July 5, 2017).

²⁷ *Id* at 2.

²⁸ MMTC recognizes and appreciates the research support of its Cathy Hughes Fellow, Stephanie Martin-Thom of Syracuse University College of Law and its Earle K. Moore Fellow, Alexander Petak of the University of Miami School of Law.